

RESOLUTION NO. _____

**RESOLUTION OF THE CITY OF DURHAM, NORTH CAROLINA AUTHORIZING THE
EXECUTION AND DELIVERY OF A SECOND NOTICE OF EXTENSION OF DEED OF TRUST
TO ADDITIONAL PROPERTY AND A COLLATERAL ASSIGNMENT OF LEASE**

WHEREAS, the City of Durham, North Carolina (the “*City*”) is a municipal corporation validly existing under the Constitution, statutes and laws of the State (the “*State*”);

WHEREAS, the City entered into (a) an Installment Purchase Contract dated as of January 1, 2007 (the “*2007 Contract*”), as amended by Amendment Number One to the 2007 Contract dated as of March 1, 2015, (the First Amendment” and together with the 2007 Contract, the “*Contract*”), each with the New Durham Corporation, a North Carolina nonprofit corporation (the “*Corporation*”), in order to finance or refinance the capital costs of, among other things, acquiring, constructing, equipping and installing of performing arts facility (the “*DPAC*”) and (b) a Deed of Trust and Security Agreement dated as of January 1, 2007 (the “*Deed of Trust*”) from the City to a deed of trust trustee (the “*Deed of Trust Trustee*”) placing a lien on the site of the DPAC and improvements thereon (the “*Premises*”) to secure the City’s obligations under the Contract;

WHEREAS, pursuant to an Indenture of Trust dated as of January 1, 2007 (the “*2007 Indenture*”), as supplemented by Supplemental Indenture, Number 1 dated as of March 1, 2015 (the “*First Supplement*” and together with the 2007 Indenture, the “*Indenture*”), each between the Corporation and Deutsche Bank National Trust Company, the successor to which is U.S. Bank National Association, as trustee (the “*Trustee*”), the Corporation executed and delivered Taxable Certificates of Participation, Series 2007A, Certificates of Participation, Series 2007B, and Taxable Refunding Limited Obligation Bonds, Series 2015, each Evidencing Proportionate Undivided Interests in Rights to Receive Certain Revenues Pursuant to the Contract (collectively, the “*Certificates*”);

WHEREAS, the City has also previously executed and delivered to the Trustee, for the benefit of the Beneficiary, a Notice of Extension of Deed of Trust to Additional Property dated as of January 31, 2014 (the “*First Notice*”) and duly recorded in Book 7435, Page 425 in the Registry, encumbering Additional Premises (as defined in the First Notice) and securing the Indebtedness (as defined in the Deed of Trust) under the Contract and the Deed of Trust, including future advances which may be made from time to time;

WHEREAS, the City has also previously executed and delivered a Deed of Partial Release dated as of January 31, 2014 (the “*Release Deed*”) and duly recorded in Book 7435, Page 415 in the office of the Registry, releasing certain property from the Premises (as defined in the 2007 Deed of Trust);

WHEREAS, the 2007 Deed of Trust contains an “*after acquired property*” clause; and

WHEREAS, City entered into an Agreement for the Construction of an Annex and Wrapper Building Adjacent to the Durham Performing Arts Center dated November 8, 2013 (the “*Development Agreement*”) with various legal entities owned and/or controlled by Capital Broadcasting Company, Incorporated (“*CBC*”). Such entities are collectively hereinafter referred to as the “*Developer*.” In connection with the execution and delivery of the Development Agreement, the Developer constructed a condominium building adjacent to the original Premises and, pursuant to the First Notice, extended the lien of the Deed of Trust to cover small portions of adjoining properties and various easement rights

sufficiently related or appurtenant to original Premises in connection with the development of the condominium building;

WHEREAS, pursuant to the Development Agreement, the City and the Developer agreed to construct a restroom facility and a new President's Club, both to be used in connection with the original Premises, within the condominium building;

WHEREAS, pursuant to a Declaration of Condominium dated November 10, 2015, and recorded in Book 7821, Page 702, in the Registry, the Developer has created a condominium unit within the condominium building which consists of a restroom facility and certain common elements (the "*Restroom Unit*") and a condominium unit located within the condominium building which consists of the President's Club and certain common elements (the "*DPAC Club Unit*");

WHEREAS, the Developer has transferred ownership of the Restroom Unit to the City pursuant to a Special Warranty Deed dated December 3, 2015 and recorded in Book 7834, Page 854, in the Registry and the Developer has granted a leasehold interest in the DPAC Club Unit to the City pursuant to the Lease Agreement dated January 20, 2014, as amended by First Amendment to a Lease Agreement dated September 23, 2015, Second Amendment to a Lease Agreement dated November 16, 2015, and Third Amendment to a Lease Agreement dated December 3, 2015 (collectively, the "*Lease Agreement*") and memorialized in a Memorandum of Lease recorded in Book 7834, Page 872 in the Registry;

WHEREAS, the city's real property interests in the Restroom Unit is sufficiently related or appurtenant to the original Premises that, pursuant to the Deed of Trust, it must be made subject to the lien created thereunder and treated as "*Additional Premises*" under the Deed of Trust;

WHEREAS, the City staff hereby requests that the City Council approve the execution and delivery of a Second Notice of Extension of Deed of Trust to Additional Property (the "*Second Notice of Extension*"), pursuant to which the City may pledge the Additional Premises and subject it to the lien created by the Deed of Trust;

WHEREAS, the city's leasehold interest in the DPAC Club Unit pursuant to the Lease Agreement is sufficiently related and appurtenant to the original Premises and the Additional Premises that the purposes of the Deed of Trust may be impaired without execution of an appropriate Collateral Assignment of Lease in the DPAC Club Unit to the Trustee (the "*Collateral Assignment of Lease*");

WHEREAS, copies of the forms of the Second Notice of Extension and the Collateral Assignment of Lease (the "*Recording Documents*") have been made available to the City Council;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DURHAM, NORTH CAROLINA, AS FOLLOWS:

Section 1. Authority to Execute and Deliver the Recording Documents. That the form and content of the Recording Documents shall be and the same hereby are in all respects authorized, approved and confirmed, and the Mayor, the City Manager and the City Clerk and their respective designees shall be and they hereby are authorized, empowered and directed to execute and deliver the Recording Documents, including necessary counterparts, in substantially the forms and content presented to the City Council, but with such changes, modifications, additions or deletions therein as shall to them seem necessary, desirable or appropriate, its execution thereof to constitute conclusive evidence of its approval of any and all changes, modifications, additions or deletions therein from the form and content of the Recording Documents presented to the City Council, and that from and after the execution and delivery thereof, the City Manager, the Finance Director and the City Clerk are hereby authorized, empowered and

directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions thereof as executed.

Section 2. *Actions by the City.* That the Mayor, the City Clerk, the City Manager, the City Finance Director, the City Attorney and their respective designees, are hereby designated to act on behalf of the City to effectuate the actions authorized by the Recording Documents, all as described in this Resolution, and all actions of such officers on behalf of the City with respect to such actions, whether previously or hereinafter taken, are hereby approved, ratified and authorized.

Section 3. *Severability.* That if any section, phrase or provision of this Resolution shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions of this Resolution.

Section 4. *Repealer.* That all motions, orders, resolutions and parts thereof, in conflict herewith are hereby repealed.

Section 5. *Effective Date.* That this Resolution shall become effective on the date of its adoption.

STATE OF NORTH CAROLINA)
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CITY OF DURHAM) SS:

I, D. ANN GRAY, City Clerk of the City of Durham, North Carolina, ***DO HEREBY CERTIFY*** that the foregoing is a true and exact copy of a resolution entitled “**RESOLUTION OF THE CITY OF DURHAM, NORTH CAROLINA AUTHORIZING THE EXECUTION AND DELIVERY OF A SECOND NOTICE OF EXTENSION OF DEED OF TRUST TO ADDITIONAL PROPERTY AND A COLLATERAL ASSIGNMENT OF LEASE**” adopted by the City Council of the City of Durham, North Carolina at a City Council Meeting held on the 21st day of March, 2016.

D. Ann Gray
City Clerk of the
City of Durham, North Carolina